
PRELIMINARY DRAFT
No. 3268

PREPARED BY
LEGISLATIVE SERVICES AGENCY
2008 GENERAL ASSEMBLY

DIGEST

Citations Affected: IC 30-4-2.1-12; IC 32-17-13-4.

Synopsis: Abatement of beneficiary interests. Specifies the order in which beneficiary interests in a trust must be abated if the trust property is insufficient to fully satisfy the interests of all beneficiaries.

Effective: July 1, 2008.



A BILL FOR AN ACT to amend the Indiana Code concerning trusts and fiduciaries.

Be it enacted by the General Assembly of the State of Indiana:

SECTION 1. IC 30-4-2.1-12 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2008]: **Sec. 12. (a) If a trust is terminated or partially terminated and the available trust property is not sufficient to fully satisfy the interests of all beneficiaries, the interests must be abated in the following order:**

(1) The interests that would be characterized as residuary devises if the trust were a will.

(2) The interests that would be characterized as general devises if the trust were a will.

(3) The interests that would be characterized as specific devises if the trust were a will.

The amount abated for each beneficiary within each classification described in subdivisions (1) through (3) must be proportional to the amount of property that each beneficiary would have received if full distribution of the trust property had been made in accordance with the terms of the trust instrument.

(b) If:

(1) a trust instrument expresses an order of abatement that differs from the order set forth in subsection (a); or

(2) the order of abatement stated in subsection (a) would impair an express or implied purpose of the trust;

the interests of the beneficiaries must be abated in the manner determined appropriate to give effect to the settlor's intent.

(c) If, under the terms of a trust that was revocable at the time of the settlor's death, the subject of a preferred devise is sold or used to pay debts, expenses, taxes, or other obligations incident to the settlement of the settlor's affairs, abatement must be achieved by adjustment in, or contribution from, other interests in the remaining trust property.

(d) Where applicable, the abatement of beneficiary interests in



1 **a trust is subject to IC 32-17-13-4.**

2 SECTION 2. IC 32-17-13-4 IS AMENDED TO READ AS
3 FOLLOWS [EFFECTIVE JULY 1, 2008]: Sec. 4. Unless otherwise
4 provided by the trust instrument, interest of beneficiaries in all trusts
5 incurring liabilities under this chapter shall abate as necessary to satisfy
6 the liability as if all of the trust instruments were a single ~~will and the~~
7 ~~interests were devised under it.~~ **trust.**

